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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/003,015	11/01/2001	Michael Gerard Kelly	AM100053	3339

25291 7590 09/05/2003

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MADISON, NJ 07940

EXAMINER

HABTE, KAHSAY

ART UNIT	PAPER NUMBER
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1624

10

DATE MAILED: 09/05/2003

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/003,015

Applicant(s)

KELLY ET AL.

Examiner

Kahsay Habte, Ph. D.

Art Unit

1624

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1) ☒ Responsive to communication(s) filed on 21 August 2003.

2a) ☐ This action is **FINAL**.

2b) ☒ This action is non-final.

3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4) ☒ Claim(s) 1,3-7,12 and 14-23 is/are pending in the application.

4a) Of the above claim(s) _____ is/are withdrawn from consideration.

5) ☒ Claim(s) 19-23 is/are allowed.

6) ☒ Claim(s) 1,3-7,12 and 14-18 is/are rejected.

7) ☐ Claim(s) _____ is/are objected to.

8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9) ☐ The specification is objected to by the Examiner.

10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

11) ☐ The proposed drawing correction filed on _____ is: a) ☐ approved b) ☐ disapproved by the Examiner.

If approved, corrected drawings are required in reply to this Office action.

12) ☐ The oath or declaration is objected to by the Examiner.

Priority under 35 U.S.C. §§ 119 and 120

13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) ☐ All b) ☐ Some * c) ☐ None of:

1. ☐ Certified copies of the priority documents have been received.

2. ☐ Certified copies of the priority documents have been received in Application No. _____.

3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

14) ☒ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).

a) ☐ The translation of the foreign language provisional application has been received.

15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

Attachment(s)

1) ☒ Notice of References Cited (PTO-892)

2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)

3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) _____.

4) ☐ Interview Summary (PTO-413) Paper No(s). _____.

5) ☐ Notice of Informal Patent Application (PTO-152)

6) ☐ Other:

DETAILED ACTION

1. Claims 1, 3-7, 12 and 14-23 are pending.
2. The indicated allowability of claim 1, 3-6, 9, 12 and 14-18 (Paper No. 8) is withdrawn in view of the newly discovered reference(s) to Caldirola et al. (US 2002/0165251 A1). Rejections based on the newly cited reference(s) follow.

Response to Amendment

3. Applicant's amendment filed 8/21/03 in response to the previous Office Action (Paper No. 8) is acknowledged. Rejections of claims 7 and 10 under 35 U.S.C. § 112, first and second paragraph (Paper No. 8, paragraphs 3-5) have been obviated.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 3-7, 12 and 14-18 are rejected under 35 U.S.C. 102(e) as being anticipated by Caldirola et al. (US 2002/0165251 A1). Said reference claims priority to

provisional application 60/243,115, with effective filing date of 10/25/2000. The cited reference teaches the preparation and use of 1,4-diazine compounds attached to indole. Specifically, many of the compounds listed on TABLE I (columns 6- 16) are the same as applicants. For example, compounds of Example (7), (8), (9), (13), (14)-(19), etc. are the same as applicants. Said compounds are the same as applicants when applicants formula I has the following substituents:

R1-R4 = H or methyl; R9 = halogen or alkoxy; X=Y = C; Ar = aryl optionally substituted or aryl optionally substituted.

Since said compounds are the same as applicants a 102(e) rejection is proper.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

Claims 1, 3-7, 12 and 14-23 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention. In claims 1,7, 12, 18-19 and 22 the dash lines "----" in the chemical structure are not correct. Since applicants elected Group IV (i.e. 1,4-diazines, A = N and m = 2), the dash line in the chemical structure is not longer needed. Applicants have also required to delete the phrase "--- represents a single bond or a double bond" from the claims. Note that N can only make three bonds.

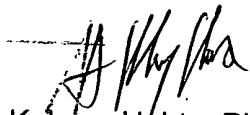
Conclusion

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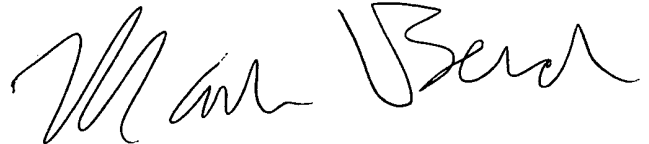
6. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Kahsay Habte, Ph. D. whose telephone number is (703) 308-4717. The examiner can normally be reached on M-F (9.00AM- 5:30PM).

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mukund Shah can be reached on 703-308-4716. The fax phone numbers for the organization where this application or proceeding is assigned are 703-308-4556.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703-308-1235.



Kahsay Habte, Ph. D.
Examiner
Art Unit 1624



Mark L. Berch
Primary Examiner
Art Unit 1624

KH
August 29, 2003